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EVST 502.01: Environmental Law for Non-Lawyers

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Environmental Law for Non-Lawyers - EVST 502

Spring 06

205 JRH

12:40-2:00 Tu & Th

Professor: Len Broberg

107a Rankin Hall

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len.broberg@umontana.edu

Office Hours: W 11-12:30, Th 2:15-3:30 pm

Course Content & Purpose

This course is designed to introduce non-lawyers to the laws, procedures and legal institutions that influence environmental regulation. The course aims to provide activists with the information they need to know to advance their campaigns and evaluate potential strategies in legal forums. There will be a mix of presentations and discussion about the course topics. Basic advocacy skills will also be emphasized in the course. Graduate students have the option of 1) pursuing a project with an outside organization involving the interpretation/analysis of legal issues which will be used by that group in a campaign or 2) taking a midterm and writing a paper on a topic relevant to the class involving legal research. The election of option must be made by February 2nd in writing to the instructor. Undergraduates are required to do option 2. Once an election is made the student is not able to change the option selected. Students choosing option 2 will make a final presentation to the class on their paper topic on April 25 through May 8th.

Texts: 1) Environmental Law & Policy: Nature, Law, and Society, Plater, Abrams & Goldfarb, 2d ed.(1998)
2) E-reserve materials (designated below as *Eres*)

Tentative class schedule:

Jan. 24 Class Intro & Federal and State court structure

Jan. 26 Introduction to federal administrative structure and administrative law
Read: PAG 378-398

Jan. 31 – Feb 2 Standing issues
Read: **Eres:** *Ohio Forestry Association, Roadless Moratorium case, 10th Cir Roadless mootness (through page 11) & Babbitt*
PAG 398-434

* Law Library session- during this week we will schedule one or two sessions of law source research instruction in the UM Law Library outside of class time

Feb 7-9 National Environmental Policy Act
Read : PAG 472-507
Eres: Ziemer & Byrd, O'Brien, *NEPA as it was meant to be, NEPA process overview and Idaho Roadless case*

Feb. 16 **Project Description Due for Option #1**

Feb. 14 -21 National Forest Management Act & Forest Planning

Read: Eres-Houck, *Law of Biodiversity*; Orelman, *Forest Service Regulations*; and
Forest Guardians case
PAG 1208-1215

Feb. 21 **Paper proposal due for Option #2**

Feb. 28 and Mar. 7 Endangered Species Act
Read: PAG 775-803
Eres: *Yellowstone Wolves case*; Berghoffen et al, *Citizen's Guide to ESA*

March 2 **No class**- makeup is law library session- see above

March 9 Habitat Conservation Planning
Read: Eres: *Alabama Beach Mouse case*; Houck, *ESA Planning*
PAG: 803-815

Mar. 14 Grazing
Read: PGA 1181-1193 Eres: Coggins et al, *FLPMA grazing*;
Feller, *Comb Wash*

Mar 16* Constitutional limits on regulation (takings, "wise use" & police power)
Read: PAG 1127-1165
Eres: Meltz et al, *Takings*
Midterm handed out

March 21 Clean Water Act & Clean Air Act
Read: PAG 446-495, 501-549

March 23 Clean Water Act & Clean Air Act- Continued

Mar 28-30 Spring Break- No class

April 4 Clean Water Act - Continued
Read: Eres: *ONDA case*(<http://laws.findlaw.com/9th/9735065.html>)

April 6 Toxics (RCRA)
Read: PAG 845-885

April 11 FIFRA
Read: PAG 816-830

April 11 **Midterm due back /Interim Project Report due**

April 13 Toxic Torts & Environmental Justice
Read: PAG 1143-1152, Eres: Manaster

April 18 Mining Law- Eres: Wilkinson- *Mining Law*; *Montana Mining Law*; *MEIC v. DEQ*

Apr. 20 Catch-up day

Apr. 25- May 8 Student presentations (Meet 1:10-3:10 on 5/8 in same room)

May 4 Papers and Projects due

* Makeups may be needed - Time and place TBA

In addition to the readings assigned on the syllabus there will periodically be other readings or materials to review on reserve in the Environmental Studies Reading Room, M-3 Rankin Hall or the Mansfield Library. M-3 is open to students outside of the EVST grad program during the week only and not on weekends, unless you can make arrangements with your classmates in the EVST grad program to get you in the building.

Student Projects- Option 1

Environmental groups will submit proposals for projects that involve a legal issue or you will develop your own project that involves an outside group and the instructor approves. By working on these projects you will:

- 1) Gain skills in analyzing legal issues.
- 2) Gain experience researching legal questions.
- 3) Do something useful for the environment and democracy.

You will select a proposal to work on or find your own project with an outside group approved by the instructor by February 9th. There will be three written reports due at the following stages of your project:

Stage 1 (Due February 16)

This report will be a project description that will identify the group you will be working with, the legal issues involved in your project and their importance to the group.

Stage 2 (Due April 11)

This report will summarize the legal issues involved and your interpretation so far.

Stage 3 (Due May 4)

The final work product you will produce for your group. Final presentations will be done on April 25 through May 8th.

Action plan/daily journal

In a daily journal format you will record the steps taken to select and complete your project each day you work on your project. The journal will be a personal resource that tracks your work and a planning tool. About every two weeks you will turn in the journal and an action plan identifying the steps you will take in the next two weeks to complete the project so that the teaching staff can make suggestions and assist you to complete the project.

Action plan/ journal due dates:

February 28

March 14

Midterm and Paper-Option 2

Students can choose to do a take-home midterm exam and a final research paper for their grade in the class. The midterm will be several fact situations with questions for the student to answer that relate to the material covered in the course so far. Students may work on the midterm in groups, however, each student must write their own answers to the questions in their own words (no repeated answers in the same words allowed from members of a group) and hand them in separately.

Students choosing this option will also complete a research paper on a topic relevant to environmental law and policy that they develop in a proposal due February 21. The proposal will be reviewed and the topic approved by the instructor. The paper should require substantial original legal source material review (legislative history, caselaw, statutes and/or administrative record) and interpretation. The final paper will be due 5/4.

NEPA Comments

As part of the NEPA portion of the course, students will prepare comments on a NEPA project suggested by the instructor or one of your own choosing approved by the instructor. The NEPA documentation and other background documents suggested by the instructor will be in the Reserve Reading Room- M-3 on e-res and/or at the Mansfield Library.

Grading

Project students:

Project	70%
Class Participation & Assignments	30%

Paper students:

Midterm	30%
Final Paper & Presentation	40%
Class Participation & Assignments	30%

Course Goals

Goals of the course are to:

1. Understand the role of agencies, the legislature and judiciary in creating, interpreting and implementing environmental law.
2. Understand what language in particular contexts forms the basis for enforcement of environmental law.
3. Understand the role of discretion in agency action and the view of the court system of agency action.
4. Understand the enforcement and implementation process of major environmental laws.
5. Understand how environmental law can effectively be used in problem-solving.
6. Cover the content of several major federal environmental laws and the policy behind them.

7. Develop oral and written communication skills relating to legal and administrative issues.
8. Empower students to be positively engaged in the environmental policy and legal process.
9. Learn and develop legal research skills.

Student Expectations

Students by the end of the course will be expected to:

1. Be able to independently find outside legal sources and properly reference them.
2. Structure a logical argument or analysis incorporating legal references/sources as support. Students should be able to apply and use the issue, rule, analysis and conclusion framework of writing about legal issues.
3. Students should be able to translate complex legal material to a broader public audience in an understandable way in writing and orally.
4. Have knowledge of major environmental laws and their most important provisions from a practical, problem-solving standpoint.
5. Know how to productively participate in legal/administrative proceedings.
6. Coherently and concisely lay out a position on a legal issue in writing.